

**NOTICE OF PROPOSED AMENDMENT OF REGULATION AND
STATEMENT OF REASONS**

**California Code of Regulations
Title 2. Administration
Division 1. Administrative Personnel
Chapter 1. State Personnel Board**

DATE: December 20, 2002

TO: ALL STATE AND LOCAL AGENCIES, EMPLOYEE
ORGANIZATIONS, AND MEMBERS OF THE GOVERNOR'S
CABINET

SUBJECT: Proposed Amendment to California Code of Regulations,
Title 2 (2CCR) § 321

The State Personnel Board (SPB) is proposing to amend Rule 321, Extension of Probationary Periods, to comply with *In re Dorri*, SPB Precedential Decision No. 02-05, May 7, 2002, and to interpret Government Code (GC) § 19170 as amended by Stats. 2002 c. 236 (Assembly Bill [AB] 1950). *In Re Dorri* affects all probationary State employees by limiting the extension of their probationary periods to a maximum of five working days. AB 1950 granted State agencies, effective January 1, 2003, the authority to additionally extend the probationary period of employees for a period not to exceed six months in order to address disability accommodation needs under the terms of an agreement between the agency and the employee requesting reasonable accommodation. Proposed new subsections of Rule 321 restate these provisions, and further define the requisite elements for the aforementioned agreement.

AUTHORITY:

Under the authority established in GC § 18701, SPB proposes to amend § 321 under Title 2, Division 1 of the California Code of Regulations.

REFERENCE:

These regulations implement, interpret, and/or make specific *In re Dorri*, State Personnel Board Precedential Decision No. 02-05, May 7, 2002, GC § 19170 as amended by Stats. 2002 c. 236 (AB 1950), and GC § 19173.

PUBLIC HEARING:

Date and Time: February 3, 2003, from 9:30 to 10:00 a.m.

Place: State Personnel Board
801 Capitol Mall, Auditorium
Sacramento, CA 95814

Purpose: To receive oral comments about this action.

WRITTEN PUBLIC COMMENT PERIOD:

The written public comment period will close February 3, 2003, at 5:00 p.m. Any person may submit written comments about the proposed regulatory changes at the hearing. To be considered by SPB, the appropriate person identified below must receive written comments before the close of the forty-five (45) day comment period.

Direct written comments to the agency contact person, Steve Unger, at the State Personnel Board (SPB), 801 Capitol Mall, MS 55, Sacramento, CA 95814, or to sunger@spb.ca.gov, or fax comments to his attention at (916) 653-1280.

**AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/
CONTACT PERSON:**

Copies of the express terms of the proposed action, Statement of Reasons, and all of the information upon which the proposal is based are available upon request from SPB's contact person. The rulemaking file and related precedential decision documents are available for review during normal business hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Precedential decisions are also published at <http://www.spb.ca.gov/spblaw/precedrd.cfm>. Additional information or questions regarding the substance of the proposed action should be directed to the agency backup contact person, Carol Ong, at the State Personnel Board, (916) 653-1397 or TDD (916) 653-1498.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text of the proposal as a result of comments received during the public comment period, SPB will make the full text of the changed regulation available for at least fifteen (15) days before the date the regulation is permanently adopted.

DOCUMENTS RELIED UPON:

In re Dorri, State Personnel Board Precedential Decision No. 02-05,
May 7, 2002.

GC § 19170 as amended by Stats. 2002 c. 236 (AB 1950).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

GC § 18701 authorizes the Board to prescribe, amend, and repeal regulations for the administration and enforcement of the Civil Service Act (GC §§ 18500 et seq.).

GC § 19170 authorizes the Board establish for each class the length of the probationary period and to provide by rule for the extension of that period for specific defined causes.

GC § 19173 allows departments to reject employees during probationary periods and sets the legitimate reasons for such rejection and the requirements for serving notice of such rejection.

In re Dorri, State Personnel Board Precedential Decision No. 02-05, May 7, 2002, makes explicit the maximum extension period for the notice period for rejections during probation.

Rule 321 is being amended in order to (1) comply with *In re Dorri*, State Personnel Board Precedential Decision No. 02-05, May 7, 2002, (2) interpret GC § 19170 as amended by Stats. 2002 c. 236 (AB 1950); and (3) make additional nonsubstantive, clarifying changes.

IMPACT ON SMALL BUSINESSES:

The proposed regulations will not impact small businesses. The proposed amendments would affect only State agencies and their employees.

LOCAL MANDATE:

This action has no mandate upon local agencies or school districts and, therefore, requires no reimbursement pursuant to GC § 17561.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Savings to State Agencies

Any additional costs or savings that the proposed amendment may cause for State and applicable local agencies will be negligible.

Impact on Housing Costs

The proposal will not affect housing costs.

Costs or Savings in Federal Funding to the State

No impact.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

The proposals do not impose nondiscretionary costs or savings on local agencies.

Cost Impact on Representative Private Persons or Businesses

SPB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed actions.

ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:

SPB has determined that the proposed action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT REGARDING THE EFFECT ON JOBS OR BUSINESSES:

The proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

DETERMINATION:

SPB must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SPB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

FINAL STATEMENT OF REASONS:

Upon completion, copies of the Final Statement of Reasons for the proposal may be obtained from the contact person.

**ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE
STATE PERSONNEL BOARD WEBSITE:**

The text of the proposed amendments in underline and strikeout, as well as the Notice of Proposed Amendment of Regulation and Statement of Reasons, will be on SPB's Web site at www.spb.ca.gov.

STATEMENT OF REASONS:

Rule 321 is being amended in order to (1) comply with *In re Dorri*, State Personnel Board Precedential Decision No. 02-05, May 7, 2002, (2) interpret GC § 19170 as amended by Stats. 2002 c. 236 (AB 1950); and (3) make additional nonsubstantive, clarifying changes.

Existing Rule 321(c) states that for all probationary employees: "The probationary period may be extended when necessary to provide the full notice period required by Section 52.3 for rejection during probation." This is imprecise, and has been made explicit by *In re Dorri* as follows: " . . . irrespective of how or when the employee is served with the Notice of Rejection During Probation, the employee's probationary period cannot, under the provisions of Rule 321(c), be extended beyond the five working day notice period contemplated by Rule 52.3." The amendment to Rule 321(c) thus codifies the maximum extension as defined by the five-member State Personnel Board in the above-cited Decision.

AB 1950 (1) grants State agencies the authority to extend the probationary period of employees for a period not to exceed six months in order to address disability accommodation needs, and (2) authorizes State agencies to enter into an agreement, subject to SPB approval, with employees who may need reasonable accommodation of disabilities as an alternative to rejecting the employee or accepting them as permanent employees (Agreement). As a consequence, State departments may now extend the probationary period for an employee with a disability in order to meet the obligation to reasonably accommodate the disability, and allow the employee to show that he or she can satisfactorily perform the essential functions of the job.

New Subsections (d) and (d)(1) of Rule 321 restate these provisions, and further define the requisite elements for the Agreement. The proposed language also requires that the Agreement be received by SPB prior to the end of the employee's probationary period. This is necessary to prevent rejection of the employee and subsequent appeal of that rejection before the Agreement can be implemented. Subsection (d)(2) is proposed in recognition of the fact that SPB's

review of the Agreement may be delayed and/or SPB may not approve the Agreement. The time frames proposed in Subsection (d)(2) are considered by SPB in its interpretation of AB 1950 to be both sufficient in length and fair to both the department and the probationary employee submitting the Agreement.

New Subsection (e) relocates the second paragraph of existing Subsection (c) and adds the requirement, for purposes of documentation, that SPB's decision to approve or disapprove the Agreement be sent to the employee and the appointing power in writing.

Mike Willihnganz
Chief, Policy Division

Attachment: Text of Proposed Regulation Amendment

Regulations Governing Probationary Period

Text added is indicated by underline. Text deleted is indicated by strikethrough.

Title 2. ADMINISTRATION

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

§ 321. Extension of Probationary Periods.

(a) In the event a probationer has not, during a prescribed calendar length of the probationary period, worked the hours set forth below, probation will automatically be extended until the probationer has worked the required number of hours.

(1) 840 if serving a six months' probationary period; or

(2) 1260 if serving a nine months' probationary period; or

(3) 1680 if serving a one year probationary period.

Vacation, sick leave, military leave or other leave of absence, compensating time off, suspension or other separations, including separations subsequently voided or otherwise set aside, shall not be considered working time.

The board shall be notified of an extension under this section.

(b) If a probationer has had a continuous period of absence of 60 or more working days and upon return from such absence the appointing power determines that the remaining portion of the probationary period is insufficient to evaluate that probationer's current performance the appointing power may extend the probationary period with the approval of the executive officer. The length of such extension shall be determined by the length of the completed portion of the probationary period at the beginning of the probationer's absence as follows:

(1) If up to one-third of the minimum number of hours required for the probationary period was worked, the remainder of the probationary period plus the extension shall not exceed the minimum number of hours required for the original probationary period.

(2) If over one-third but not more than two-thirds of the minimum number of hours required for completion of the probationary period was worked, the remainder of the probationary period plus the extension shall not exceed two-thirds of the minimum number of hours required to complete the original probationary period.

(3) If over two-thirds of the minimum number of hours required to complete the probationary period was worked, the remainder of the probationary period plus the extension shall not exceed one-third of the minimum number of hours required to complete the original probationary period.

(c) The probationary period may be extended ~~when necessary to provide the full for~~ a maximum of five working days in order to comply with notice ~~period required by~~ requirements as set forth in Section 52.3 for rejection during probation.

~~Prior to the completion of the probationary period, the appointing power shall notify the employee that the probationary period is being extended under this section and of the length of the extension. Employees whose probationary periods are extended under this provision must also, over the entire course of their original and extended probationary periods, meet the minimum service requirements specified in part (a) of this section.~~

(d) Pursuant to Government Code Section 19170, an appointing power and an employee, who alleges that he/she has a disability as defined in Government Code Section 12926, may submit a written agreement for approval by the board, that would extend the employee's probationary period within his/her existing classification for up to six months to provide a reasonable accommodation to the employee as follows:

(1) The agreement shall describe the period of the extension, beginning and ending dates, and how the extended probationary period will allow the employee to demonstrate, before the extended probationary period ends, the ability to satisfactorily perform the essential functions of the position with the reasonable accommodation. The

written agreement must be received by the board for review prior to the end of the employee's probationary period.

(2) If the employee's probationary period will end during the board's review, the board will automatically extend the probationary period until a determination is made to approve or disapprove the agreement. This period of time is inclusive of the extension time requested by the department. If the board does not approve the agreement, the board will extend the employee's probationary period by an additional ten working days from the date of service of the board's determination, to allow the appointing power sufficient time to proceed with a rejection during probation. This ten working day extension is in addition to that provided under subsection (c) above.

(e) Prior to the completion of the probationary period, the appointing power shall notify the employee in writing that the probationary period is being extended under this rule and of the length of the extension. Employees whose probationary periods are extended under this rule must also, over the entire course of their original and extended probationary periods, meet the minimum service requirements specified in subsection (a) above. The State Personnel Board shall notify the employee and the appointing power in writing of its decision to approve or disapprove any agreement reached pursuant to subsection (d) above.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19170 and 19173, Government Code.